

1 The Honorable John C. Coughenour
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11 UNITED STATES DISTRICT COURT FOR THE
12 WESTERN DISTRICT OF WASHINGTON
13 AT SEATTLE
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16 UNITED STATES OF AMERICA,
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18 Plaintiff,
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20 v.
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22 KENNETH JOHN RHULE,
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24 Defendant.
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27 CASE NO. CR20-105 JCC
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1 enforcement—using shell companies to conceal his assets; opening financial and online
 2 accounts using alternative names and addresses; concealing his identity using Tor browsers,
 3 encrypted applications, and the darkweb; and amassing substantial cryptocurrency assets.
 4 The Defendant could employ these same strategies to effectively evade arrest and access
 5 funds while fleeing prosecution.

6 Given the severity of the charges faced by the Defendant, a presumption of detention
 7 applies. As Judge Tsuchida correctly found, the Defendant has failed to rebut this
 8 presumption of detention, posing both a flight risk and danger to the community, and should
 9 be ordered detained pending trial.

10 II. APPLICABLE LAW

11 The Bail Reform Act of 1984 permits pretrial detention of a defendant where “no
 12 conditions or combination of conditions will reasonably assure the appearance of the person
 13 as required . . .” 18 U.S.C. § 3142(e). A presumption arises that no condition will
 14 reasonably assure the person’s appearance “if the judicial officer finds that there is probable
 15 cause to believe that the person committed an offense for which a maximum term of
 16 imprisonment of ten years or more is prescribed in the . . . Controlled Substances Import and
 17 Export Act.” 18 U.S.C. § 3142(e)(3)(A).

18 The defendant may proffer contrary evidence to rebut the presumption of detention,
 19 but the presumption remains as an “evidentiary finding militating against release, to be
 20 weighed along with other evidence relevant to factors in § 3142(g).” *United States v. Hir*,
 21 517 F.3d 1081, 1086 (9th Cir. 2008). The factors in § 3142(g) include: (1) the nature and
 22 circumstances of the offense charged; (2) the weight of the evidence against the defendant;
 23 (3) the history and characteristics of the person, including his character, physical and mental
 24 condition, employment, financial resources, length of residence in the community,
 25 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and
 26 record concerning appearance at court proceedings; and (4) the nature and seriousness of
 27 danger posed by release. See 18 U.S.C. § 3142(g)(1)-(4); *United States v. Winsor*, 785 F.2d
 28 755, 757 (9th Cir. 1986); *United States v. Motamed*, 767 F.2d 1403, 1407 (9th Cir. 1985).

1 The presumption in favor of detention, as well as the § 3142(g) factors, demonstrate that the
 2 Defendant should remain detained.

3 **III. BACKGROUND**

4 The Defendant was arrested on July 14, 2020, while disembarking a flight at the
 5 Honolulu airport. The Defendant had flown from Washington to Hawaii, carrying with him
 6 a small duffel bag of clothing, a drone, and \$10,000 in cash.¹ For the two weeks prior
 7 arriving in Hawaii, law enforcement had been communicating with the Defendant, under the
 8 guise of returning various pieces of property, in order to arrest him on an outstanding
 9 warrant. Rather than meeting with law enforcement, the Defendant sent his son's girlfriend
 10 to collect his property. With her in his place, the Defendant traveled to Superior, Montana,
 11 where he remained until he traversed through Washington on his way to Hawaii.²

12 After arriving in Hawaii, the Defendant was arrested and held in the Federal
 13 Detention Center in Honolulu. In light of the U.S. Marshals' limited flight schedule due to
 14 COVID-19, the United States made alternative arrangements to expeditiously transport the
 15 Defendant to Washington. Specifically, the government arranged to have the Defendant
 16 escorted by law enforcement from the Honolulu prison, placed on a commercial flight to
 17 Washington, collected by law enforcement from the SeaTac airport, and brought to the
 18 courthouse for an initial appearance. On July 24, 2020, Magistrate Judge Tsuchida ordered
 19 the Defendant detained pending trial. Dkt. 11.

20 **IV. ARGUMENT**

21 **A. The Defendant has a Compelling Motive to Flee**

22 **a. The Defendant Faces a Mandatory Minimum Prison Sentence of Ten
 23 Years**

24 From 2014 through 2020, the Defendant, along with his son, KENNETH WARREN
 25 RHULE, manufactured and distributed marijuana and marijuana distillates, ultimately

27
 28 ¹ The Defendant's son, Connor Rhule, was residing in Hawaii at the time.

² This information was obtained pursuant to a tracker warrant.

1 earning more than \$13.5 million in income. For this conduct, the Defendant has been
 2 charged by Indictment with Conspiring to Manufacture and Distribute Marijuana and
 3 Marijuana Distillates, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846. Dkt. 31. If found
 4 guilty of this offense, the Defendant faces a mandatory minimum sentence of ten years'
 5 imprisonment. Facing the daunting prospect of serving a decade in prison, the Defendant has
 6 a strong incentive to flee to avoid prosecution. As described herein, the weight of the
 7 evidence favors conviction in this case.

8 **i. Law Enforcement Found Substantial Evidence Implicating the**
 9 **Defendant when they Searched the Monroe Compound and the**
 10 **Defendant's Residence on March 10, 2020**

11 On March 10, 2020, law enforcement searched several properties owned by the
 12 Defendant and KENNETH WARREN RHULE, including a property located in Monroe,
 13 Washington, where the Defendant and his co-conspirators manufactured and distributed
 14 marijuana products (hereafter described as the “Monroe Property”). As described in the
 15 Complaint, the Defendant and his co-conspirators built a laboratory on the Monroe Property,
 16 designed to produce marijuana extracts. In this lab, the Defendant used chemicals and
 17 solvents—including combustible butane and propane, carbon dioxide, and dry ice—to
 18 extract Tetrahydrocannabinol (“THC”) from marijuana plants. Once extracted, the
 19 Defendant created marijuana distillates—sold in the form of gels, liquids, and solid
 20 crystalline substances, including those commonly referred to as “clear” and “shatter.”

21 When law enforcement searched the Monroe Property on March 10, 2020, they found
 22 a fully-functioning distillation lab, along with an employee who was in the midst of
 23 conducting an extraction.³ In this lab, law enforcement also found 100 large trash bags filled
 24 with over 900 kilograms of bulk marijuana.

25
 26
 27
 28 ³ RHULE_00329701.



At the time of the search, the Defendant was living in a residence located on the property, in close proximity to the laboratory:



The Defendant's residence was used to sell and ship the marijuana products manufactured in the lab. For example, on a desk in the Defendant's bedroom, agents found marijuana products stored in individual jars, a drug ledger, packing labels, and USPS shipping boxes.⁴ Agents also found packages, sealed and ready to ship, containing marijuana products. These packages were affixed with shipping labels bearing fake sender names and fake sender addresses. Additionally, next to the Defendant's bed, law enforcement found a laptop, open to a darkweb vendor page, advertising the sale of marijuana products.⁵ Finally, inside the residence, law enforcement also located multiple firearms, including two stolen weapons, and over \$300,000 worth of cryptocurrency.

⁴ RHULE_00331838.

⁵ RHULE_00331836.

1 In short, the evidence gathered on March 10, 2020, alone would be sufficient to
 2 convict the Defendant of the charged offense, which carries with it a ten year mandatory
 3 minimum term of imprisonment. Faced with this substantial evidence, the Defendant has a
 4 strong motive to flee rather than face conviction and lengthy incarceration.

5 **ii. Law Enforcement Found Substantial Additional Evidence
 6 Implicating the Defendant During the Course of their
 7 Investigation**

8 In addition to the evidence gathered on the Monroe Property, during the course of its
 9 investigation, law enforcement has also obtained electronic evidence proving that the
 10 Defendant conspired to manufacture and distribute marijuana products. Specifically, law
 11 enforcement determined that the Defendant and his co-conspirators sold their marijuana
 12 products under the label HerbinArtisans. HerbinArtisans held a Google Enterprise account,
 13 which the Defendant accessed using the email address ken@herbinartisans.com. In this
 14 account, law enforcement found emails sent by the Defendant describing his marijuana
 15 operations. For example, the Defendant sent the following email to his son, KENNETH
 16 WARREN RHULE, on January 10, 2016, creating a protocol for extracting marijuana
 17 products.⁶

18 **worksheet extraction**

19 **From:** Jon Kuhn <ken@herbinartisans.com>
 20 **To:** Kenneth Rhule <kenny@herbinartisans.com>
 21 **Date:** Sun, 10 Jan 2016 19:13:58 -0800
 22 **Attachments:** extractionworksheetdraft.rtf (3.1 kB)

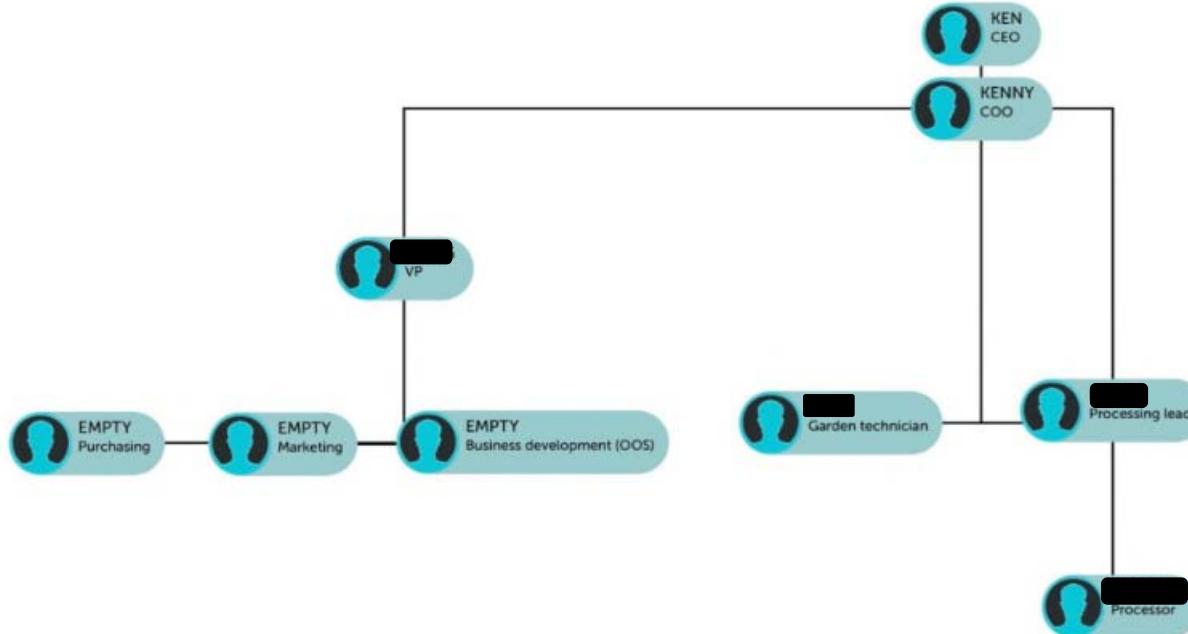
23 Kenny,

24 I quickly drafted a very basic extraction worksheet. This is a 1 page document that needs to follow the
 25 extraction process from the very beginning to the end.
 26 Its designed to place accountability on each the extract technician, and the purge technician. Additionally,
 27 its a document that will hang by clip on the column, to the stainless table, to the oven and act as a quick
 28 visual to each batch (with all the info we need). Take a look, I am sure it can be more robust, but this is
 just to get us going. We need this in place Monday morning. Feel free to enhance it if....

29 Print out 50-100 of these at the shop and we need to make sure everyone uses them..

28 ⁶ RHULE_00256445.

1 Agents also located a self-drafted organizational chart,⁷ found on KENNETH
 2 WARREN RHULE's laptop and the HerbinArtisans Google account, showing that the
 3 Defendant served as the CEO of this operation, overseeing multiple employees.



15 Additionally, on KENNETH WARREN RHULE's laptop, agents located text
 16 messages exchanged between the Defendant and KENNETH WARREN RHULE outlining,
 17 among other things, the Defendant's ambitions for his marijuana operations, including the
 18 following:⁸

19
 20 Defendant: This op at the warehouse is 95% done. It's setup to generate 2535lbs per
 21 room every 60 days (which is 2535 lbs once per month out of alternating
 22 rooms) that is \$5070k per month, plus the trim that it yields. That, along with
 23 supplemental oil to keep the system running is another 2535k per month.
 24 That can be run smoothly with just [C and M2] (or 2 employees). That's
 25 roughly 100k per month in revenue with costs of less than 18k per month...
 26 That leaves us with 80k per month for you and I. When the construction is
 27 finished, that output becomes a walk in the park. As the employees get
 28 familiar with the systems, they dial them in further and can do it in their

26
 27 ⁷ RHULE_00020633. This chart was saved in a Google Photos folder for kenny@herbinartisans.com titled "2016-01-18." Based on the individuals identified in the chart, it is believed to represent the organizational structure for HerbinArtisans.

28 ⁸ RHULE_00338456 (March 30, 2015).

1 sleep. It doesn't need to be stressful. It doesn't need [M], end user sales, etc.
 2 Simply moving volume wholesale to a small handful of people. After the
 3 setup is done, this whole thing can operate with A couple of people, it really
 4 won't be that involved. It's time consuming because it involved construction
 and learning the industry. Both of those variables are nearly complete now.

5 Finally, in order to track HerbinArtisans' income and expenses, the Defendant and his
 6 co-conspirators used cloud-based accounting software. Using this software, the Defendant
 7 tracked HerbinArtisans' sale of marijuana products, purchase of bulk marijuana from
 8 growers, and employee expenses. In the accounting records, the Defendant is described as
 9 the subscriber on the account, which he routinely logged into, including as recently as
 10 December 2019.⁹ In sum, the electronic evidence gathered in this case, coupled with the
 11 items found during the search of the Defendant's property, weigh in favor of conviction.
 12 Faced with this evidence, and the prospect of serving a lengthy prison sentence, the
 13 Defendant has a compelling reason to flee prosecution.

14 **iii. On May 4, 2020, Law Enforcement Informed the Defendant
 15 that he was a Target of the Investigation**

16 For purposes of evaluating detention, the Defendant's state of mind in May 2020 is
 17 particularly relevant. In May 2020, less than two months after law enforcement searched the
 18 Defendant's home, officers informed the Defendant that he was a target of their
 19 investigation. On May 4, 2020, law enforcement met the Defendant at the Harvey Airfield in
 20 Snohomish, Washington.¹⁰ On that date, agents served a warrant to search the Defendant's
 21 Cessna airplane. At the time the agents arrived, the Defendant was flying in the aircraft with
 22 his son, Connor Rhule. When the plane landed, it was searched and, after a drug detection
 23 dog alerted to a locked rear compartment in the tail of the aircraft, the plane was seized.

24 During the search, the Defendant approached law enforcement and explained that the
 25 aircraft was jointly owned by him and Connor Rhule, a statement that Connor Rhule denied.
 26

27
 28 ⁹ RHULE_00331038.

¹⁰ Exhibit 1 (RHULE_00331038).

1 Agents then advised the Defendant to stop flying over the Northwest Detention Center,
 2 where Olga Rhule was held, since his low flights were causing the Center to go into
 3 lockdown. Before departing, an agent explained to the Defendant that “it was likely he
 4 would be receiving a target letter, as [the Defendant] did have a connection to the
 5 investigation of his son KENNETH W. RHULE.”¹¹ As a result, the Defendant was
 6 expressly told that he was under investigation and was a target in the case.

7 After being advised that he was a target of the investigation, the Defendant didn’t
 8 appear shocked or express surprise. And this makes sense. Based on the substantial amount
 9 of evidence taken from the Defendant property, residence, and bedroom on March 10, 2020,
 10 and the agent’s seizure of his airplane on May 4, 2020, a reasonable person would conclude
 11 that he was under investigation for manufacturing and distributing marijuana. Accordingly,
 12 as of May 4, 2020, the Defendant knew that he was under investigation, a target letter was
 13 imminent, and, based on the evidence gathered against him, his arrest was nearly inevitable.

14 **b. The Defendant Also Faces Certain Separation from His Wife of 19 Years**

15 In addition to avoiding arrest and lengthy incarceration, the Defendant also has a
 16 second compelling reason to flee the jurisdiction, his desire to avoid separating from his
 17 wife, who has been ordered to return to Russia. On March 10, 2020, law enforcement
 18 arrested the Defendant’s wife, Olga Rhule, for immigration-related violations. In 2002, Ms.
 19 Rhule immigrated from Russia on a fiancé visa, which was later withdrawn, remaining in the
 20 United States without status.¹² After overstaying her visa, Ms. Rhule married the Defendant.
 21 As a visa overstayer, Ms. Rhule was unable to adjust her status and, for the past nineteen years,
 22 has had no lawful basis to remain in the United States.

23 On May 7, 2020—a mere three days after law enforcement informed the Defendant
 24 that he was a target of their investigation—Ms. Rhule was detained at the Northwest
 25 Detention Center awaiting deportation. Facing his wife’s impending removal from the

27
 28 ¹¹ *Id.* at p. 7.

¹² At the time, Ms. Rhule intended to marry someone other than the Defendant but that engagement ended.

1 United States, and fearful he would be arrested, the Defendant began making arrangements
2 to flee to Russia. Specifically, during a recorded conversation on that date, the Defendant
3 explained that he was applying for an expedited passport, was preparing to obtain a Russian
4 visa to travel, and was taking other steps to prepare to live in Russia:¹³

5 Olga Rhule: First of all let me ask you this. I'm not getting out any time
6 soon right?

7 Defendant: I don't think so.

8 Olga Rhule: How much time . . . approximately?

9 Defendant: I don't know if there is a time limit that you're going to get
10 out. **I think we may have to have you go back to Russia, and me meet you there.**

11 Olga Rhule: Well if that happens how much time?

12 Defendant: He couldn't answer that question because of COVID. But it
13 sounds like your hearing is on the 28th.

14 Olga Rhule: 29th.

15 Defendant: 29th. Is it the 29th? I thought it was the 28th. So you can
16 basically, um . . . At the hearing you're gonna, you're gonna
17 basically say you're not gonna challenge it any more, you
18 know and you want to go just proceed with the deportation.

19 Olga Rhule: Can it not happen sooner?

20 Defendant: He said from there—He said he didn't think so but I'll push
21 that issue more but . . . I'll see if—He'll have to do another
22 one of these requests to move the hearing up kind of thing
23 and they'll have to grant it or not.

24 Olga Rhule: Can you try?

25 Defendant: Yes I can try. Of course. Um.. But here's the thing, even with
26 that, **it's gonna take me about that long to get my passport and visa and stuff like that situated so I'm working on that now to get that expedited.**

27 Olga Rhule: OK.

28 Defendant: I was gonna go down this afternoon and get my pictures real
quick so I can mail off the passport document and I'm gonna

¹³ Exhibit 2 at 1:25-4:08 (RHULE_00340777) (emphasis added).

1 do it instead of normal, **I'm gonna do it urgent, you know**
2 **the urgent time frame and pay the extra money.**

3 Olga Rhule: OK.

4 Defendant: And then I got to apply for the visa, you know the visa over
5 there . . . There's some other things I'm working on, but I can't
6 talk to you about them.¹⁴

7 Olga Rhule: I understand.

8 Defendant: You know what I'm talking about right?

9 Olga Rhule: I think I maybe—

10 Defendant: It's what you think.

11 Olga Rhule: OK.

12 Defendant: So I'm working on all that stuff right now. OK?

13 Olga Rhule: OK.

14 Defendant: And um yeah, **I'll be with you no matter what.**

15 Olga Rhule: Promise?

16 Defendant: **Yes. Of course I promise . . . Of course I promise.**

17 The United States has confirmed with the State Department that the Defendant did, in fact,
18 apply for a passport, intent on leaving for Russia. Had the Defendant's passport arrived, and
19 had Ms. Rhule been deported, the United States believes that the Defendant would have fled.

20 Since this conversation occurred, Ms. Rhule was released from immigration custody
21 on bond and has been ordered to leave the United States by October 5, 2020. Rather than
22 mitigate the Defendant's risk of flight, his wife's release has made the situation more dire.

23 Ms. Rhule now has a final order from the immigration judge requiring her to voluntarily
24 leave the United States and return to Russia within the next three weeks.¹⁵ In light of this
25 order, the Defendant is faced with two choices: (1) remain in the United States, appear at
26 trial, serve a substantial jail sentence, and leave his wife to return to Russia alone; or (2) flee

27 ¹⁴ Given the amount of cryptocurrency owned by the Defendant, discussed below, the United States believes that this
28 reference could have described moving funds so that the Defendant and his wife could live comfortably in Russia.

¹⁵ This deadline may be extended due to COVID-19 but statutorily may not be extended more than 120 days (or until
February 2, 2021).

1 with his wife and hide in the United States, Russia, or any other country, and avoid
 2 separation and a prison term. Not surprisingly, as the Defendant stated during that recorded
 3 phone conversation, he had already chosen to flee.

4 The Defendant contends that, during this recorded conversation, he was not
 5 describing plans to flee prosecution. Instead, he claims he was describing a strategy to
 6 remain with his wife in Russia while she pursued immigration options. However, regardless
 7 of the reason, the outcome remains the same. In order to be with his wife, the Defendant
 8 made plans to move to a country that has no extradition treaty with the United States.
 9 Whether his motives were romantic or nefarious, the fact remains that the Defendant was
 10 prepared to leave his home and his family, traveling across the world to live in a foreign land
 11 for an undetermined length of time, so his wife could try to obtain immigration relief. The
 12 Defendant's ties to Russia—the country where his wife will reside—coupled with his desire
 13 to maintain his nineteen year marriage makes the Defendant a substantial flight risk.

14 **i. Olga Rhule Will Not be Permitted to Return to the United States**

15 After Olga Rhule travels to Russia, she will have no lawful path to return to the
 16 United States. Notably, Ms. Rhule faces two barriers to obtaining lawful status. First,
 17 having overstayed her fiancé visa, she is barred from returning to country for a period of ten
 18 years. And, second, as a prior drug user with a conviction for solicitation of heroin, she is
 19 permanently barred from reentering the country. While there is a chance that she might
 20 obtain a discretionary waiver for overstaying her visa, prior drug use cannot be waived.

21 As for the first bar, Ms. Rhule was “unlawfully present in the United States for one
 22 year or more.” 8 U.S.C. § 1182(a)(9)(B)(i)(II). As a result, she is ineligible to return to the
 23 United States for a period of ten years. *Id.* Pursuant to Section 1182(a)(9)(B)(v), she may
 24 apply for a waiver, allowing her to reenter the United States on an earlier date, if she can
 25 show that refusal of her admission “would result in extreme hardship to [her] citizen . . .
 26 spouse.” However, there is no guarantee that a waiver would be granted. Rather, waivers
 27 are purely discretionary, issued by the Attorney General, and “[n]o court . . . ha[s]
 28

1 jurisdiction to review" these decisions.¹⁶ *Id.* Furthermore, Ms. Rhule would have to remain
 2 in Russia while awaiting this discretionary relief.

3 Even if she were fortunate enough to obtain a discretionary waiver, Ms. Rhule also
 4 faces a second bar to returning. Specifically, Section 1182(a)(2)(A)(II) provides that:

5 any alien convicted of, or who admits having committed, or who admits
 6 committing acts which constitute the essential elements of— (II) a violation of
 7 (or a conspiracy or attempt to violate) any law or regulation of a State, the
 8 United States, or a foreign country relating to a controlled substance (as
 defined in section 802 of title 21) . . . is inadmissible.

9 Once she returns to Russia, when completing the immigrant visa application, Ms. Rhule will
 10 be asked the following question: "Have you ever violated, or engaged in a conspiracy to
 11 violate, any law related to controlled substances?"¹⁷ Based on her prior drug conviction,¹⁸
 12 Ms. Rhule would be required to answer this question in the affirmative. As set forth in the
 13 statute, prior drug possession and use are complete bars to returning. Under Section 1182(h),
 14 the only controlled substance violations that may be waived are those that "relat[e] to a
 15 single offense of simple possession of 30 grams or less or marijuana." Since Ms. Rhule's
 16 conviction relates to heroin use, there is no waiver that Ms. Rhule could obtain.

17 Under similar circumstances, the petitioner in *Pazcoguin v. Radcliffe*, 292 F.3d 1209
 18 (9th Cir. 2001), was denied admission to the United States. In *Pazcoguin*, a Philippine
 19 national arrived at the Honolulu International Airport and applied to enter the country. In his
 20 immigrant visa application, the petitioner admitted to previously smoking marijuana in
 21 violation of law. Having learned of this drug use, an Immigration Judge found the petitioner
 22 excludable from the United States under 8 U.S.C. § 1182(a)(2)(A)(i)(II). The Ninth Circuit

23
 24 ¹⁶ In his declaration, Ms. Rhule's immigration attorney stated that, in granting voluntary departure, the Immigration
 25 Judge "who was aware of the facts pertaining to Ms. Rhule's case, including her criminal history, told Ms. Rhule that by
 26 taking a voluntary departure she could attempt to return to the United States through an application for a visa from
 27 Russia." Dkt. 61 at 163. However, any such statement is purely dicta that has no precedential weight. The Immigration
 28 Judge has no authority to determine whether Ms. Rhule is eligible for a waiver, and the issue of waiver eligibility was
 not before the court at the time the statement was made.

¹⁷ Form DS-260.

¹⁸ This conviction is appended as Exhibit 3 (under seal). It is not discussed in detail in this pleading to protect Ms. Rhule's privacy interests.

1 affirmed this finding, determining that the petitioner was excludable despite the fact that he
 2 his absence would pose a hardship for the petitioner's mother, who was a United States
 3 citizen. *Id.* at 1218-19.

4 Similarly, in *Villa-Valladolid v. Gonzalez*, 146 Fed. Appx. 177, 179 (9th Cir. 2005)
 5 (unpublished), the Ninth Circuit evaluated whether a petitioner who "was convicted of
 6 possessing marijuana for sale, not simple possession," was entitled to a waiver of
 7 inadmissibility under Section 1182(h).¹⁹ The Court denied the petitioner's request,
 8 concluding that he was "ineligible for waiver of inadmissibility . . . because his prior
 9 conviction did not involve a minor controlled substance offense for which waiver could be
 10 granted." *Id.* Accordingly, as with the petitioner in *Pazcoguin*, Olga Rhule's prior heroin
 11 use would render her inadmissible to the United States. And, as with the petitioner in *Villa-*
 12 *Vallodolid*, Olga Rhule would not be entitled to a waiver of that inadmissibility. Unable to
 13 return to the United States, the only way for the Defendant and his wife to maintain their
 14 nineteen year relationship would be to flee together.

15 **ii. The Denial of the Defendant's Passport Application Does not
 16 Eliminate his Flight Risk**

17 On August 7, 2020, the State Department denied the Defendant's passport application,
 18 informing him he was ineligible for a travel document because of an ongoing tax dispute
 19 with the Internal Revenue Service ("IRS") and his "seriously delinquent tax debt." Dkt. 61,
 20 Ex. A at 148. Absent a passport, the Defendant claims he is incapable of fleeing the
 21 jurisdiction. However, as the Court knows, individuals enter and exit the United States on a
 22 near daily basis without lawful passports. The United States land border is extensive, human
 23 smugglers are prevalent, and fraudulent passports can be readily purchased. Additionally,
 24 now that the Defendant's wife has been released from immigration custody, the Defendant is
 25

26 ¹⁹ Section 212(h) of the Immigration and Nationality Act is codified at 8 U.S.C. § 1182(h). *See also Harvey v.*
 27 *Homeland Security*, 207 Fed. Appx. 118, 120 (2d Cir. 2006) (unpublished) (petitioner not entitled to waiver after
 28 conviction for crack cocaine, holding only marijuana could be waived); *Marquez-Perez v. Immigration and
 Naturalization Service*, 2 Fed. Appx. 600, 600 (8th Cir. 2001) (unpublished) (petitioner not entitled to waiver after
 conviction for possession with intent to distribute cocaine, noting only simple possession of marijuana could be waived).

1 no longer required to return to Russia. Instead, the two could flee virtually anywhere in the
 2 world—Mexico, Canada, an alternative city in the United States. Once reunited out of
 3 custody, the two could travel to any preferred location to avoid prosecution and separation.
 4 The Defendant has already shown a willingness to break the law. Traveling without a
 5 passport, or obtaining a fraudulent passport, would be far a less serious charge than the
 6 charge the Defendant is already facing.

7 It is also worth noting that, when asked by the Probation Officer in Hawaii, the
 8 Defendant did not report that he had applied to renew his passport. Instead, he stated that he
 9 his passport was expired and did not know its current whereabouts. Ultimately, the
 10 Probation Officer only learned that the Defendant had applied for a new passport when she
 11 interviewed the Defendant's son, Connor Rhule, who reported that the Defendant had
 12 recently submitted a passport application. Hawaii PSR at 2.

13 Facing the prospect of a substantial jail sentence, separation from his wife, and her
 14 exclusion from the United States, the Defendant may reasonably conclude that he would be
 15 better served fleeing prosecution. The Defendant has already taken substantial steps towards
 16 fleeing—applying for a passport, explaining that he was preparing to obtain a Russian visa,
 17 and planning to meet his wife in Russia. The Defendant took these steps knowing that he
 18 was under investigation, knowing that substantial evidence establishing his guilt had been
 19 uncovered, and knowing that he could reunite with his wife in Russia where he would not
 20 face extradition. Since the Defendant initially made the decision to flee, his situation has
 21 only gotten worse. The Defendant is now aware that he has been charged with an offense
 22 that carries a ten year mandatory minimum prison sentence. The Defendant has now served
 23 over two months in custody and does not want to remain incarcerated. The Defendant now
 24 knows that, by court order, his wife must voluntarily depart the United States. The
 25 Defendant made his intentions clear during that May 7, 2020 phone call, and the events that
 26 have occurred since that date have only made his motives to flee more compelling.

1 **B. The Defendant has the Means to Flee Prosecution**

2 The Defendant not only has a compelling motive to flee prosecution—to avoid a
 3 lengthy prison sentence and separation from his spouse—he also has the means to evade law
 4 enforcement detection. The Defendant has long been honing his ability to hide from law
 5 enforcement—using shell companies to conceal his assets; opening financial and online
 6 accounts using alternative names and addresses; concealing his identity using Tor browsers,
 7 encrypted applications, and the darkweb; and amassing substantial cryptocurrency assets.

8 **a. The Defendant Has Used Aliases, Fake Social Security Numbers, and
 9 Alternative Addresses to Hide His Identity**

10 While committing the charged offense, the Defendant has proven adept at using
 11 alternative names, social security numbers, or addresses when purchasing property, applying
 12 for cryptocurrency accounts, and communicating online.

13 **i. The Defendant Uses Aliases to Hide His Identity**

14 For example, when opening corporations and online accounts, the Defendant has used
 15 the aliases “John Kuhn” and “Jon Kuhn.” “John Kuhn” was the subscriber listed on the
 16 Defendant’s intellivisioninc@gmail.com account, while “Jon Kuhn” was the subscriber
 17 listed on the Defendant’s ken@herbinartisans.com account. On January 10, 2016, the
 18 Defendant sent the following email to KENNETH WARREN RHULE, noting the alias and
 19 indicating that he may have logged into the email address using a “stealth account.”²⁰

20 **RE: worksheet extraction**

21 **From:** Jon Kuhn <ken@herbinartisans.com>
 22 **To:** Kenneth Rhule <kenny@herbinartisans.com>
 23 **Date:** Sun, 10 Jan 2016 19:48:39 -0800

24 My name is stuck as john juhn on this... not sure how that happened, I may have been logged into a
 25 stealth account when I first logged on. I cant change my name, are you able to?

26

27

28 ²⁰ RHULE_00256449.

1 In addition to using aliases to open email accounts, the Defendant also used aliases
 2 when incorporating companies and opening financial accounts. For example, the Defendant
 3 used the alias “John Kuhn” when incorporating his shell company, RKK Associates LLC.²¹
 4 The Defendant also opened cryptocurrency accounts at Coinbase using the aliases “John K
 5 Rhule,” “John Rhule,” and “John Ruhl.”²² Finally, the Defendant opened Neteller and
 6 PayPal accounts in the name “John Ruhl.”²³

7 **ii. The Defendant Avoids Associating Accounts with his Social
 8 Security Number**

9 In addition to employing aliases, the Defendant has used a fake social security number
 10 to avoid associating his financial accounts with his true identity. For example, the Defendant
 11 opened an account at Coinbase, an online cryptocurrency wallet provider, in the name of
 12 “Kenneth Rhule,” listing a social security number not associated with him.²⁴ This practice is
 13 consistent with the advice the Defendant offered KENNETH WARREN RHULE regarding
 14 use of credit cards that are not tied to their names and identifiers. Specifically, on November
 15 4, 2015, the Defendant sent KENNETH WARREN RHULE a photograph of a credit card,
 16 stating:

17 This one is tied to my name and SSN, so it’s more of a short term deal... But we
 18 could load a million dollars on to this card and I can justify to the irs that it was
 19 from the cash sale of assets acquired on taxes I had already paid and that I had
 no capital gain in selling the “stuff”... So they can f[*]ck themselves...²⁵

20 Similarly, in May 2015, KENNETH WARREN RHULE advised the Defendant that he had
 21 two bank accounts and “didn’t think either ha[d] [his] correct social.”²⁶

24
 25 ²¹ RHULE_00325257.
 26 ²² RHULE_00328579-81, 00002970.

27 ²³ RHULE_00334253, 00334261, 00334302 (Neteller accounts allow users to send and receive money online).
 28 ²⁴ RHULE_00002975.

27 ²⁵ RHULE_00338056. The Hawaii PSR also noted that the social security number the Defendant provided to the
 Probation Officer was not associated with him. It’s unclear which social security number this report is referencing.

28 ²⁶ RHULE_00338056. The United States has confirmed that KENNETH WARREN RHULE uses a fake social security
 number when opening financial accounts.

iii. **The Defendant Uses Mailing Addresses that are Not Tied to his Home**

To further conceal his identity, the Defendant has also avoided having his online accounts and assets registered to his home address, instead listing postal boxes, his parents' home, or seemingly random locations as his mailing addresses.²⁷ For example, the Defendant used a postal box in Woodinville, Washington, to register his vehicles, receive shipments mailed to his shell company RKK Associates LLC, and register one of his aircrafts.²⁸ Additionally, the Defendant used a second postal box in Grandville, Michigan, to incorporate RKK Associates LLC.²⁹ The Defendant also used his parents' address in Nevada, to open a Gemini cryptocurrency account, register for a credit card, and pay taxes on the Defendant's property in Monroe, Washington.³⁰ The Defendant has also used seemingly random addresses to when mailing marijuana products, using fake return addresses and fake sender names on his shipments.³¹

14 By using these diffuse strategies—false names, false social security numbers, false
15 addresses—the Defendant avoided law enforcement detection, and the closure of his
16 accounts by financial institutions, for a considerable length of time. The Defendant could
17 employ these same strategies to effectively evade arrest and access funds while fleeing
18 prosecution.

b. The Defendant Hides His Assets, Vehicles and Residence by Using Shell Corporations

21 Not only has the Defendant attempted to conceal his identity by providing false
22 information, he has also incorporated shell companies in order to further hide his assets and
23 avoid association with marijuana manufacturing and distribution. When incorporating these

²⁶ Notably, the Defendant does have mail and packages delivered to his home address, so the use of alternative mailing address is not due to insufficient mail service.

²⁷ ²⁸ RHULE_0002294, 00006595, 00331926, 00333586, 00333635.

27 | ²⁹ RHULE-00325257.

³⁰ RHULE_00003710, 00000501, 00326509, 00329015.

28 | ³¹ RHULE-00331627.

1 companies, the Defendant listed his family members as nominee directors or managers. He
 2 also listed these companies' principal places of business as addresses in Russia or domestic
 3 postal box locations.

4 For example, in March 2016, the Defendant incorporated Frontline LLC in Delaware
 5 using a registered agent, Harvard Business Services.³² Once incorporated, the Defendant
 6 used Frontline LLC to purchase the Monroe Property—used to manufacture marijuana—and
 7 to register Olga Rhule's vehicle—used to transport packaged marijuana products.³³ By
 8 incorporating this entity, and using a registered agent, the Defendant avoided being publicly
 9 linked to the corporation. Instead, when searching Delaware's corporations registry, the only
 10 information that is available regarding this entity is its incorporation date, and the name and
 11 address of its registered agent, Harvard Business Services.³⁴ Adding a further layer of
 12 anonymity, when incorporating this entity, the Defendant designated his Russian father-in-
 13 law as the company's "managing member."³⁵ Additionally, on the incorporation paperwork,
 14 the Defendant listed Frontline LLC's principal place of business as Khabarovsk, Russia. The
 15 same managing member and business address were submitted to the IRS in order to obtain a
 16 taxpayer Employer Identification Number ("EIN").

17 In addition to Frontline LLC, the Defendant also incorporated RKK Associates LLC
 18 in Delaware, again using Harvard Business Services.³⁶ Once incorporated, the Defendant
 19 used RKK Associates LLC to register a van and a truck—used to transport bulk marijuana
 20 and marijuana products.³⁷ As with Frontline LLC, this corporation is not publicly linked to
 21

22 ³² RHULE_00325257.

23 ³³ RHULE_00328593. As described above, on March 10, 2020, law enforcement located a number of USPS mailers
 24 containing marijuana products ready to be shipped inside this vehicle.

25 ³⁴ Obtained by searching the Delaware Division of Corporation's website, *available at*
 26 <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx>.

27 ³⁵ Although the Defendant now states that he is the managing member of Frontline LLC, that document appended to the
 28 Defendant's motion is not publicly available and was not produced by Harvard Business Services in response to a
 subpoena. As a result, despite the Defendant's protestations to the contrary, that document does not effectively link
 Frontline LLC to the Defendant.

³⁶ RHULE_00325257.

³⁷ On March 10, 2020, law enforcement located bulk marijuana and a cash counter inside the truck, which was, at the
 time, driven by KENNETH WARREN RHULE.

1 the Defendant. In fact, according to the State of Delaware, there is no registered agent
 2 currently assigned to this entity. Instead, when incorporating this entity, the Defendant listed
 3 his wife—using her maiden rather than married name—as the corporation’s managing
 4 member.³⁸ Additionally, the Defendant listed a postal box in Grandville, Michigan, as RKK
 5 Associates LLC’s principal place of business. This same managing member and business
 6 address were submitted to the IRS to obtain an EIN. Furthermore, as described above, when
 7 incorporating this entity, the Defendant used the alias “John Kuhn.”

8 These corporations were created to distance the Defendant from his marijuana
 9 operations, designed to avoid taxation and criminal enforcement. Law enforcement only
 10 linked the Defendant to Frontline LLC and RKK Associates LLC by conducting years-long
 11 surveillance, identifying the Defendant’s vehicles and properties, and obtaining registration
 12 and tax records for those assets.

13 **c. The Defendant Has Extensive Cryptocurrency Holdings and Financial
 14 Reserves**

15 The Defendant also has access to substantial assets, including those held in
 16 cryptocurrency, providing him with further means to flee. As alleged in the complaint, in
 17 order to record HerbinArtisans’ inventory, expenses, payroll, and sales, the Defendant used
 18 cloud-based accounting software. Complaint at ¶¶ 26-27. The Defendant fastidiously
 19 maintained those accounting records, which law enforcement obtained pursuant to a search
 20 warrant. According to those records, between 2015 and 2020, HerbinArtisans made over
 21 \$13 million in income.³⁹ Furthermore, those records show that HerbinArtisans held a
 22 substantial portion of its earnings in cryptocurrency, avoiding financial institutions that could
 23 report suspicious activity to law enforcement.⁴⁰

24 While operating HerbinArtisans, the Defendant held accounts at numerous
 25 cryptocurrency exchanges and wallet providers. For example, the Defendant held accounts
 26

27 ³⁸ RHULE_00325257
 28 ³⁹ Exhibit 4.
⁴⁰ See, e.g., Exhibit 5 (under seal).

1 at multiple cryptocurrency wallet providers, including those located abroad.⁴¹ Law
 2 enforcement has obtained records from a portion of those providers—those that respond to
 3 law enforcement requests—and determined that the Defendant has converted a substantial
 4 amount of cryptocurrency into cash. For example, between November 2015 and January
 5 2017, the Defendant used his LocalBitcoins.com account to sell over \$180,000 worth of
 6 Bitcoin to others in exchange for gift cards and cash.⁴² Additionally, from August 2017
 7 through November 2018, the Defendant transferred over \$80,000 to his BitPay card, using
 8 that card to make purchases and withdraw cash at ATMs.⁴³

9 Law enforcement has also determined that the Defendant often opened multiple
 10 accounts with cryptocurrency wallet providers, using slightly different names, email
 11 accounts, and mailing addresses. In addition to opening multiple accounts, using inaccurate
 12 information, the Defendant also appears to have used mixers—which combine
 13 cryptocurrency obtained from many users, route them through a complex funding path, and
 14 redistribute them so they no longer can be readily traced to a specific source—to conceal his
 15 assets. On April 29, 2015, the Defendant and KENNETH WARREN RHULE exchanged the
 16 following text messages, describing the use of such mixers (described as “a wash service”):⁴⁴

17 Defendant: There is also a new service that will send you a credit card which is linked to
 18 a Bitcoin wallet address and it will convert at market price and transact at any
 19 location that accepts credit cards

20 KWR: Yeah I can. I'd like to do all of that using tails,⁴⁵ or a bit more anonymous
 21 than my PC

22 KWR: We need to do it ASAP

23 Defendant: That's the thing... Bitcoin can be 100% anonymous. If setup correctly ... Once
 24 a week we dump all excess profit into an offline wallet, but first run it
 25 through a wash service...

26 ⁴¹ RHULE_00002963, 00002973, 00003719, 00003638, 00328572, 00328582, 00329253, 00329258, 00334743,
 00338048, 00341471.

27 ⁴² RHULE_00338022.

28 ⁴³ RHULE_00325739.

⁴⁴ RHULE_00338056.

⁴⁵ TAILS is a Tor based, portable operating system that increases a user's anonymity online.

1 Furthermore, the Defendant also uses hardware wallets—external devices, similar to a
 2 thumb drive or hard drive, capable of storing cryptocurrency offline. To seize
 3 cryptocurrency stored on hardware wallets, law enforcement must locate and access those
 4 devices. When law enforcement searched the Defendant's residence they located some
 5 hardware wallets, along with multiple pieces of paper containing seed phrases—lists of
 6 randomly generated words that can be used to access a cryptocurrency wallet. Using these
 7 seed phrases, law enforcement seized more than 28 bitcoins, currently worth over \$300,000,
 8 from the Defendant.⁴⁶ Notably, this is a small fraction of the total bitcoins paid by customers
 9 to HerbinArtisans.⁴⁷ The remainder of this cryptocurrency remains outside of law
 10 enforcement's current grasp, capable of being accessed and spent by the Defendant.

11 It's not surprising that the Defendant has such vast cryptocurrency reserves, and
 12 employed sophisticated techniques to conceal them from law enforcement. As the
 13 Defendant and KENNETH WARREN RHULE discussed in 2015, in order to profit from
 14 their drug ventures they needed to store and spend their proceeds without detection.⁴⁸

15 **From:** Kenneth Rhule <kenny@herbinartisans.com>
 16 **To:** Jon Kuhn <ken@herbinartisans.com>, C [REDACTED] E [REDACTED]@herbinartisans.com>
 17 **Date:** Thu, 29 Oct 2015 18:55:02 -0700

18 Secret spending.

19 We need to have a solution for online transactions, and local ones at that (credit card).... Bitcoin is the
 20 most anonymous currency available. Problem is spending it!

21 Bank accounts link socials or tax ID of the business. And we don't want to be reporting income. I am aware
 22 we are working on scheme for this, it seems that may take some time.

23 As it stands, there are a few bitcoin to credit/debit card services available. They do NOT ship to the US,
 24 but they do ship to the UK. We can signup for a virtual mailbox out of the U.K., and have our debit card
 25 forwarded to a recipient in the US. We can use the cards here.... They legally can't be shipped here.

26 I'm not sure if that work around will "work". But we all need to get our wheels turning on this. Even if we
 27 incorporate in another country, we can get a bank there, and issue ourselves credit cards that can be used
 28 around the world.

29 In order to be successful we must all communicate and work on our goals together. We do not have
 30 enough time where we all collaborate. Even if for 15minutes a day.
 31 Let get this company Rolling!

32 -Kenny

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 46 RHULE_00333402.

47 Exhibit 5 (under seal).

48 RHULE_00254668.

1 Armed with substantial cryptocurrency reserves, the Defendant has the means to flee
 2 the jurisdiction and live comfortably while a fugitive. Although the Defendant is willing to
 3 offer his parents' and sibling's homes as collateral, the income earned by HerbinArtisans
 4 (over \$13.5 million), the bitcoin converted by the Defendant through BitPay and
 5 LocalBitcoins (over \$260,000), and the bitcoin seized from the Defendant's residence (over
 6 \$300,000), dwarf the collateral pledged by these third parties. With these financial assets,
 7 the Defendant could reimburse his family for any losses incurred by his failure to appear.

8 **d. The Defendant Has the Ability to Hide his Activities Online by Using
 9 Encrypted Applications, Tor Browsers, and the Darkweb**

10 The Defendant has spent the last six years honing his skills to remain anonymous
 11 online, using Tor browsers, encrypted chat communications, and darkweb forums when
 12 selling marijuana products. The Defendant could use these same skills to remain anonymous
 13 during flight, evading law enforcement's efforts to track and arrest him.

14 For example, as alleged in the Complaint, the Defendant used the darkweb to sell his
 15 marijuana products. Complaint at ¶ 23. When law enforcement searched the Defendant's
 16 bedroom on March 10, 2020, agents located a laptop open to a darkweb site advertising the
 17 sale of marijuana distillates.⁴⁹ This laptop was running the TAILS operating system, a Tor-
 18 based, portable operating system designed to protect a user's anonymity online. On this
 19 darkweb site, the Defendant exchanged messages with his customers, including "Order was
 20 dropped yesterday (Mon) at Post office," and "is it same for chips, batter and diamonds, 4 oz
 21 per small priority box? I only like small priority boxes as they don't get much attention."
 22 Also open within the Tor browser was the website Bitcoinpostage.info, which the Defendant
 23 used to anonymously buy and print USPS shipping labels.

24 In addition to the darkweb, the Defendant also used encrypted chat communications
 25 to avoid law enforcement surveillance. On his personal devices, the Defendant downloaded
 26 numerous applications designed to preserve anonymity, including VPNs, VOIP, and PGP

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⁴⁹ RHULE_00340808.

1 applications, along with the encrypted chat applications, Signal, Telegram, WhatsApp, and
2 Wickr.⁵⁰ During the course of the conspiracy, the Defendant frequently used Signal and
3 Wickr to communicate with his son and the other employees at HerbinArtisans. For
4 example, on October 25, 2014, the Defendant texted KENNETH WARREN RHULE “... I
5 was wick[i]ng you about the extraction gear,” referring to marijuana processing equipment.
6 Additionally on October 28, 2014, when KENNETH WARREN RHULE texted the
7 Defendant “These guys are saying 5-7k for 100 lbs of sugar leaf trim but pickup is Humboldt
8 county,” the Defendant responded “Wick...” The Defendant could continue to utilize these
9 applications, and his ability to remain anonymous online, to evade law enforcement if he
10 became a fugitive.

e. The Defendant has a History of Failure to Comply, Obstruction, and Tax Avoidance

13 Although the Defendant claims he will abide by the terms of a bond, his history of
14 failing to follow the law and comply with the directives of law enforcement undermine that
15 assertion. The Defendant has a prior conviction for obstruction of justice,⁵¹ another citation
16 for failure to comply, has failed to appear in a prior matter, and has an outstanding tax
17 dispute with the IRS. Additionally, before he was charged in the present case, the Defendant
18 was sent a cease and desist order by Snohomish County to stop processing marijuana at the
19 Monroe property, which he fully ignored. Specifically, on October 11, 2017, a Snohomish
20 County Planning and Development Services Code Enforcement Officer sent the Defendant a
21 letter stating:

50 RHULE 00341471.

⁵¹ In February 2009, the Defendant was convicted, after trial, of Obstructing a Law Enforcement Officer, in violation of RCW 9A.76.020(1). In that case, the State alleged that the Defendant and his friend, both intoxicated, were erratically driving a black Ferrari at a high rate of speed across the 520 bridge. After officers stopped the vehicle, they arrested the driver for driving while intoxicated. The Defendant, a passenger in the vehicle, also appeared to be intoxicated, and was later determined to have a blood alcohol level of .123 or .124. After his friend was arrested, the Defendant became belligerent, shouting obscenities at the officers. When officers informed the Defendant that the Ferrari would be towed, the Defendant became confrontational, jumping in the car and driving it away (despite his intoxication). Thereafter, officers pursued the vehicle, stopped it, and the Defendant was arrested. Attached as Exhibit 6 (under seal).

1 I am investigating an alleged violation regarding the property [located in
 2 Monroe]. The alleged violation involves allowing marijuana processing to
 3 take place in an area not zoned for such activity.⁵²

4 Despite receiving this notice, the Defendant continued to process marijuana on the property
 5 until it was searched by law enforcement in March 2020. In short, the Defendant has
 6 repeatedly demonstrated an unwillingness to comply with the law—there is no reason to
 7 believe that he will now become compliant and abide by conditions of release.

8 **f. The Defendant is a Private Pilot with Access to Airplanes**

9 The Defendant is also a licensed pilot, having obtained his student pilot's license from
 10 the FAA in January 2019.⁵³ As a student pilot, the Defendant is licensed to fly alone,⁵⁴ and
 11 the Defendant completed his first solo flight on May 7, 2019.⁵⁵ Since that date, the
 12 Defendant has completed other solo flights and has logged dozens of flight hours.⁵⁶
 13 Although law enforcement seized the Defendant's plane, and the Defendant claims his other
 14 aircraft is inoperable, the Defendant still possesses the ability to fly private aircraft. By
 15 renting or purchasing a new airplane, the Defendant could still effectively flee.

16 For all of the reasons outlined above—the Defendant's ties to Russia, his ability to
 17 use false identifiers to evade law enforcement detection, his incorporation of shell
 18 companies, his access to cryptocurrency reserves, his experience using encrypted and
 19 anonymous communication mechanisms, his ability to pilot an aircraft, combined with his
 20 historic failure to abide by the law—the Defendant has proven that he possesses the
 21 resources and skills necessary to evade arrest as a fugitive.

22 **C. The Defendant Also Poses a Danger to the Community**

23 In addition to posing a substantial risk of flight, the Defendant also poses a danger to
 24 the community. On March 10, 2020, when law enforcement searched the Defendant's

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 26 ⁵² RHULE_00331417.

27 ⁵³ RHULE_00331644.

28 ⁵⁴ https://www.faa.gov/pilots/become/student_cert/

⁵⁵ RHULE_00331628.

⁵⁶ RHULE_00331632, 00331645.

1 residence and property, they found not only an arsenal of weapons—including two stolen
 2 firearms—they also found that the Defendant was using highly combustible fuels to extract
 3 his marijuana products, fuels that have historically caused explosions and injury in other
 4 illegal processing facilities.

5 **a. The Defendant Possessed Multiple Firearms, Including Two Stolen
 6 Weapons**

7 When law enforcement searched the Defendant's residence on March 10, 2020, they
 8 located an arsenal of weapons, including two stolen firearms.⁵⁷ In total, law enforcement
 9 located eighteen weapons, including multiple assault rifles, one of which had a hundred
 10 round drum-magazine. Under the Defendant's bed, agents located a Colt pistol, which had
 11 been reported stolen. A second stolen weapon, a loaded rifle, was also found in the
 12 Defendant's gun safe. In short, the Defendant's property was heavily fortified, including
 13 with stolen weapons, to protect the marijuana products and cryptocurrency held within.

14 **b. Explosive Nature of Marijuana Extraction**

15 Additionally, the methods used by the Defendant to extract and distill marijuana are
 16 heavily regulated for a reason—if done improperly, they can lead to explosions and fires. In
 17 order to distill marijuana products, processors use highly combustible butane and propane,
 18 along with dry ice and carbon dioxide tanks. On March 10, 2020, when law enforcement
 19 searched the Defendant's laboratory they found these chemicals, along with an employee
 20 who told them that he had just completed a particularly dangerous portion of the extraction
 21 run that could have resulted in injury or explosion if performed improperly.⁵⁸

22 Just last month, a similar marijuana lab exploded in Centralia, Washington, causing
 23 one employee to suffer extensive burns and nearly resulting in a brushfire.⁵⁹ In 2013, a
 24 defendant caused an explosion at an apartment complex in Bellevue, Washington, resulting

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 27 ⁵⁷ RHULE_00329890, 00331840-41, 00331880-81, 00331899.
 28 ⁵⁸ RHULE_00329701.
 29 ⁵⁹ *Fire, explosion at Centralia pot processing plant injures employee*, King 5 (August 12, 2020), available at
<https://www.king5.com/article/news/local/pot-explosion-severe-burn-centralia-cbd/281-12f7d6d4-d190-4569-b356-3ab29e2f7fe0>

1 in injuries and a death.⁶⁰ As a result, in order to protect the community, licensed marijuana
 2 extractors are inspected and are required to operate in buildings built to withstand explosion.
 3 The Defendant's laboratory had neither been inspected nor was it specially configured. It
 4 also lacked safety protocols to prevent employees from suffering life-altering burns. Given
 5 the risk of explosion for the workers employed by the Defendant and the Defendant's
 6 immediate neighbors, along with the number of stolen and registered firearms located at the
 7 Monroe property, the Defendant also appears to pose a safety risk to the community if he
 8 resumes operating his marijuana facility upon release.

9 **D. The Cases and Circumstances Cited by the Defendant Do Not Mandate Release**

10 The Defendant cites myriad cases claiming that the offenses charged in those cases
 11 are comparatively more dangerous than that committed by the Defendant. But the United
 12 States has never argued that the Defendant must be detained solely because of the threat he
 13 poses to the community. Rather, the flight risk posed by the Defendant, evidenced by his
 14 express plan to flee to Russia, remains the primary force compelling detention in this case.
 15 As described herein, the Defendant took concerted efforts to flee—preparing to travel to
 16 Russia, applying for a passport, discussing obtaining a visa to travel to Russia, conferring
 17 with his wife regarding his intentions to meet her in Russia—all days after being informed
 18 that he was a target of law enforcement's investigation. Even the Defendant's co-defendant,
 19 KENNETH WARREN RHULE, does not have the same motives to flee—his partner is not
 20 from Russia and she is not being removed from the United States.⁶¹ After evaluating the
 21 unique circumstances faced by the Defendant, circumstances that are rare amongst those who
 22 appear before this Court, Magistrate Judge Tsuchida correctly determined that the Defendant
 23 failed to rebut the presumption of detention.

24

25⁶⁰ *Former Bellevue Resident Whose Drug Manufacturing Sparked Explosion and Fire Sentenced to Nine Years in Prison*,
 26 Department of Justice (June 8, 2015), available at <https://www.justice.gov/usao-wdwa/pr/former-bellevue-resident-whose-drug-manufacturing-sparked-explosion-and-fire-sentenced> (sentenced to nine years imprisonment).

27⁶¹ Notably, the Magistrate Judge Peterson's opinion, appended to the Defendant's motion, was issued when KENNETH
 28 WARREN RHULE was only charged with violating 21 U.S.C. § 841(b)(1)(B), and as such no presumption of detention
 applied.

1 The fact that the Defendant has been charged with manufacturing and distributing
 2 marijuana, legal under Washington law if licensed, does not alter this conclusion. In a
 3 comparable case, *United States v. Xiamin Huang*, CR18-124 JCC (October 16, 2018), Dkt.
 4 86, this Court upheld Magistrate Judge Donohue's order detaining an individual charged
 5 with the same offense as the Defendant—Conspiracy to Manufacture and Distribute
 6 Marijuana. Xiamen Huang was a U.S. citizen, originally born in China,⁶² who purchased
 7 residential properties in order to grow marijuana. In this Court's order, it found Huang to be
 8 a flight risk based on her access to financial resources, family connections to China, lack of
 9 meaningful employment in Washington, and the pending ten year mandatory minimum
 10 charge. In comparison, the Defendant has the same, if not worse, risk factors. For one, the
 11 Defendant's financial resources far surpass that earned by Huang whose assets were
 12 predominately tied up in real estate and amounted to less than \$600,000. The Defendant's
 13 foreign connections are also more significant than Huang's, now that the Defendant's wife of
 14 nearly twenty years is returning to Russia. In comparison, Huang was a U.S. citizen whose
 15 children, siblings, and parents each resided in the United States. Like Huang, the Defendant
 16 has no meaningful employment in Washington, given that he has been employed as a
 17 marijuana producer for the past six years with no other source of income. And Like Huang,
 18 upon conviction, the Defendant will face a lengthy separation from his family.

19 Additionally, the Defendant's proposed release plan does not compel a different
 20 result, as it neither addresses his motive to flee nor the danger the Defendant poses to the
 21 community. The Defendant requests to be released from prison, returned to his home where
 22 his co-defendant, KENNETH WARREN RHULE, and the Defendant's wife are residing.
 23 He requests to be returned to the same property where the Defendant and KENNETH
 24 WARREN RHULE manufactured and distributed marijuana, in a remote portion of Monroe,
 25 Washington. The risks inherent in allowing co-defendants to reside together, in remote
 26

27 ⁶² Huang had renounced her Chinese citizenship and no longer possessed a Chinese passport. Huang was ultimately
 28 deemed to be safety valve eligible because, unlike the Defendant she was neither a leader of the conspiracy nor
 possessed weapons.

1 locales, once used to commit the charged offenses, are apparent. These risks are further
2 heightened by the strain that COVID-19 has placed on our Probation Office, reducing its
3 ability to effectively monitor defendants and conduct regular home visits. Additionally, as
4 the Court knows, ankle monitors can be tampered with and removed, ultimately providing
5 law enforcement with only moments' notice to apprehend suspects intent on fleeing.

6 The only remaining argument the Defendant advances for release concerns the current
7 pandemic. The government does not take the risk posed to prisoners during the COVID-19
8 outbreak lightly. It was because of this risk that the government devised a strategy to escort
9 the Defendant on a commercial flight, rather than having transported through multiple
10 institutions facing COVID-19 outbreaks. But the risks at FDC SeaTac, while worthy of
11 concern, are improving and do not compel release. At present, 16 inmates are infected with
12 COVID-19, 13 of which are male. Thirty inmates who have previously tested positive have
13 since recovered. Additionally, two staff members are currently suffering from COVID-19,
14 and five staff members who previously tested positive have since recovered. Given that the
15 FDC SeaTac houses 648 inmates, this represents a 2% infection rate among inmates, which
16 is lower than that present in King County. The Bureau of Prisons is taking aggressive steps
17 to quell any further spread, isolating inmates and placing units on lockdown in order to avoid
18 additional infections. Furthermore, the Defendant is not a high-risk inmate, as he is
19 comparatively young (45) and, according to his PSR, suffers from intermittent asthma that is
20 controlled by albuterol—a non-steroidal inhaler—and Claritin. In light of the Defendant's
21 substantial flight risk, and danger to the community, the Defendant should be detained
22 despite the current health climate.

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V. CONCLUSION

In light of the pending charges, there is a presumption of detention in this case. The Defendant has failed to rebut that presumption, posing both a risk of flight and a danger to the community. The Defendant's compelling motivation to flee—to avoid a lengthy prison sentence and separation from his spouse—coupled with his proven ability to evade law enforcement detection require that the Defendant be detained pending trial.

DATED this 16th day of September, 2020.

Respectfully Submitted,

BRIAN T. MORAN
United States Attorney

/s/ Marie M. Dalton
MARIE M. DALTON
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: (206) 553-1511
E-mail: marie.dalton2@usdoj.gov